

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

JOEY KIMBROUGH,

Plaintiff,

v.

AMERICAN EXPRESS COMPANY AKA  
AMERICAN EXPRESS NATIONAL BANK

and

TRANS UNION LLC,

Defendants.

---

Case No. 1:22-cv-01993-TWP-MJD

**DEFENDANT AMERICAN  
EXPRESS NATIONAL BANK'S  
RESPONSE IN OPPOSITION TO  
PLAINTIFF'S MOTION TO  
PROCEED WITH CASE  
MANAGEMENT PLAN**

Defendant American Express National Bank (“American Express”) files this Response in Opposition to Plaintiff’s Motion to Proceed with Case Management Plan (the “Motion”) [ECF No. 27] and in support thereof states as follows:

1. The Court entered a Scheduling Order in this matter on May 26, 2023, in which the Court set a discovery deadline of December 15, 2023, and a summary judgment deadline of January 12, 2024, among other dates. [ECF No. 19]. The Scheduling Order, rather than Kimbrough’s proposed Case Management Plan [ECF No. 18-1], controls the deadlines in this matter.

2. Plaintiff Joey Kimbrough (“Kimbrough”) filed a Motion for Summary Judgment on May 31, 2023. [ECF No. 20].

3. On June 27, 2023, the Court granted American Express’s request for extension of time to respond to Kimbrough’s Motion for Summary Judgment “until such time as the Court has ruled on the issue of whether Plaintiff is required to arbitrate this dispute.” [ECF No. 26].

4. American Express filed its Motion to Compel Arbitration [ECF No. 29] on August 15, 2023, in which it requests that the Court enter an order requiring Kimbrough to arbitrate this dispute pursuant to the express terms of the arbitration agreement contained in the cardmember agreements governing his American Express accounts.

5. In his Motion, Kimbrough asks that the Court (1) “[o]rder the parties to proceed with the Case Management Plan as scheduled” and (2) “[s]et a firm and immediate deadline for Defendant to file its Motion to Compel Arbitration, or deem that motion waived.” Mot. At 5.

6. As to the first request in the Motion, as fully articulated in its Motion to Compel Arbitration, American Express contends that Kimbrough’s dispute must be resolved in arbitration, rather than before this Court. For the same reasons that this Court extended American Express’s time to respond to Kimbrough Motion for Summary Judgment, American Express requests that all other deadlines in the Scheduling Order be stayed until such time as the Court has ruled on the issue of whether Kimbrough is required to arbitrate this dispute. Should this Court ultimately deny the Motion to Compel Arbitration, American Express will cooperate with Kimbrough to move for any necessary adjustments to the Scheduling Order to “secure the just, speedy, and inexpensive determination of [this] action.” *See* Mot. at 1 (quoting Fed. R. Civ. P. 1).

7. As to the second request in the Motion, American Express has now filed its Motion to Compel Arbitration, so the request for the Court to set a deadline is now moot.

WHEREFORE, American Express respectfully requests the Court deny Plaintiff’s Motion to Proceed with Case Management Plan and, upon full briefing of the Motion to Compel Arbitration, enter an order (1) requiring Plaintiff to arbitrate this dispute and (2) staying this action pending completion of arbitration.

Dated: August 16, 2023.

Respectfully submitted,

By: /s/ Adam R. Hoock

Stephen J. Newman

California Bar No. 181570

[snewman@Step toe.com](mailto:snewman@Step toe.com)

Adam R. Hoock

Florida Bar No. 118264

California Bar No. 340811

[ahoock@Step toe.com](mailto:ahoock@Step toe.com)

**STEPTOE & JOHNSON LLP**

2029 Century Park East, 18th Floor

Los Angeles, CA 90067

Telephone: +1 213 439 9400

Fax: +1 213 439 9599

[docketing@step toe.com](mailto:docketing@step toe.com)

Attorneys for Defendant *American Express  
National Bank*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on August 16, 2023, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and certify that a true and correct copy of the foregoing was provided to all parties and counsel of record.

/s/ Adam R. Hoock

Adam R. Hoock